

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

August 8, 2006

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| MARFORK COAL COMPANY, INC., | : | CONTEST PROCEEDINGS              |
| Contestant                  | : |                                  |
|                             | : | Docket No. WEVA 2006-707-R       |
|                             | : | Citation No. 7239942; 05/22/2006 |
|                             | : |                                  |
| v.                          | : | Docket No. WEVA 2006-708-R       |
|                             | : | Citation No. 7239943; 05/22/2006 |
| SECRETARY OF LABOR,         | : |                                  |
| MINE SAFETY AND HEALTH      | : | Docket No. WEVA 2006-709-R       |
| ADMINISTRATION, (MSHA),     | : | Citation No. 7239946; 05/23/2006 |
| Respondent                  | : |                                  |
|                             | : | White Queen                      |
|                             | : | Mine ID 46-8297                  |
|                             | : |                                  |
|                             | : | Docket No. WEVA 2006-710-R       |
|                             | : | Citation No. 7253955; 05/22/2006 |
|                             | : |                                  |
|                             | : | Brushy Eagle                     |
|                             | : | Mine ID 46-8315                  |
|                             | : |                                  |
|                             | : | Docket No. WEVA 2006-711-R       |
|                             | : | Citation No. 7254891; 05/23/2006 |
|                             | : |                                  |
|                             | : | River Fork Powellton #1          |
|                             | : | Mine ID 46-08914                 |
|                             | : |                                  |
|                             | : | Docket No. WEVA 2006-760-R       |
|                             | : | Citation No. 7257562;06/26/2006  |
|                             | : |                                  |
|                             | : | Slip Ridge Cedar Grove Mine      |
|                             | : | Mine ID 46-09048                 |
|                             | : |                                  |
|                             | : | Docket No. WEVA 2006-752-R       |
|                             | : | Citation No. 7254904;06/07/2006  |
|                             | : |                                  |
|                             | : | Docket No. WEVA 2006-753-R       |
|                             | : | Citation No. 7254905;06/07/2006  |

: Docket No. WEVA 2006-754-R  
: Citation No. 7254907;06/07/2006  
:  
: Docket No. WEVA 2006-755-R  
: Citation No. 7254911;06/12/2006  
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: Docket No. WEVA 2006-756-R  
: Citation No. 7254912;06/12/2006  
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: Docket No. WEVA 2006-757-R  
: Citation No. 7254915;06/12/2006  
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: Docket No. WEVA 2006-758-R  
: Citation No. 7254917;06/14/2006  
:  
: River Fork Powellton #1  
: Mine ID 46-08914  
:  
: Docket No. WEVA 2006-770-R  
: Citation No. 7254922;06/26/2006  
:  
: Docket No. WEVA 2006-771-R  
: Citation No. 7254928;06/26/2006  
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: Docket No. WEVA 2006-772-R  
: Citation No. 7254939;06/26/2006  
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: Docket No. WEVA 2006-773-R  
: Citation No. 7254930;06/26/2006  
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: Docket No. WEVA 2006-774-R  
: Citation No. 7254931;06/26/2006  
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: Docket No. WEVA 2006-775-R  
: Citation No. 7254932;06/26/2006  
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: Docket No. WEVA 2006-776-R  
: Citation No. 7254933;06/26/2006  
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: Docket No. WEVA 2006-777-R  
: Citation No. 7254935;06/26/2006

: Docket No. WEVA 2006-778-R  
: Citation No. 7254937;06/26/2006  
:  
: Marsh Fork Eagle Mine  
: Mine ID 46-08913  
:  
: Docket No. WEVA 2006-791-R  
: Citation No. 7247599; 06/28/2006  
:  
: Docket No. WEVA 2006-792-R  
: Citation No. 7247600; 06/28/2006  
:  
: White Queen Mine  
: Mine ID 46-08297

**STAY ORDER**  
**AND**  
**ORDER LIMITING DISCOVERY**

The Secretary has filed a motion to stay the above contest matters pending the docketing and assignment of the related civil penalty case. The Contestant does not oppose the Secretary's motion. Accordingly, in the interest of administrative efficiency, these proceedings **ARE STAYED. IT IS ORDERED** that the parties initiate a conference call with the undersigned within 21 days of the docketing and assignment of the pertinent civil penalty case to lift this stay and to schedule these matters for a consolidated hearing.

The Secretary, in her stay motion, requests that the operator should be ordered to provide periodic status reports concerning the progress of the related civil penalty matters. The Contestant opposes the Secretary's suggestion. This issue is moot as I have not ordered any status reports with respect to the progress of the Secretary's civil penalty proposal

There are 24 contested citations in these proceedings. In instances where contests are stayed to await the Secretary's proposal of civil penalties, postponing discovery until the Secretary's proposal is presented to the operator facilitates settlement discussions and may

obviate the need for discovery on some or all of the citations in issue. In order to avoid the undue burden or expense that may result from needless discovery, pursuant to Commission Rule 56(c), 29 C.F.R. § 2700.56(c), **IT IS ORDERED** that discovery shall be limited to periods when these matters are no longer on stay.<sup>1</sup>

Jerold Feldman  
Administrative Law Judge  
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Distribution: (Certified Mail)

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<sup>1</sup> An operator served with a citation alleging a violation of the Mine Act, or alleging a violation of a mandatory safety standard that has been abated, may immediately contest the citation under section 105(d) without waiting for notification of the proposed penalty assessment. 30 C.F.R. § 815(d). In such cases, section 105(d) provides that “the Commission shall afford an opportunity for a hearing.” An operator may have an interest in an early hearing, such as in cases where continued abatement is expensive, or where the validity of the citation or order impacts on an operator’s continued exposure to 104(d) withdrawal sanctions. *Energy Fuels Corporation*, 1 FMSHRC 299, 307-08 (May 1979). Thus, the purpose of a contest proceeding is to adjudicate the validity of a citation without waiting for the Secretary’s proposed civil penalty. Absent a reason to believe that an operator has a need for an early hearing, contests should not be filed solely for the initiation of discovery when, as in this case, the operator elects to forgo its right to an early hearing by acquiescing to a stay.